UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

STANDARD PARKING, IMPERIAL PARKING, AMPCO SYSTEM PARKING d/b/a ABM PARKING SERVICES, LAZ PARKING, INTERPARK, individually and on behalf of CHICAGO PARKING ASSOCIATION

and

Case 13-CA-071259

TEAMSTERS LOCAL NO. 727

Lisa Friedheim-Weis, Esq.,
for the Acting General Counsel.

Douglas Darch and Alexis Hawley, Esqs.,
for the Respondents.

Jayna Brown, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEOFFREY CARTER, Administrative Law Judge. This case was tried in Chicago, Illinois on June 17–20, 2013. Teamsters Local No. 727 (the Union) filed the charge on December 22, 2011. The Acting General Counsel issued the complaint on February 1, 2013, and issued an amendment to the complaint on February 11, 2013.

The Acting General Counsel alleges in its complaint that Standard Parking, Imperial Parking, Ampco System Parking d/b/a ABM Parking Services, LAZ Parking and Interpark (Respondents), individually and on behalf of the Chicago Parking Association (the Association) reached a complete agreement with the Union on or about October 28, 2011, for the terms and conditions of employment that would be incorporated into a collective-bargaining agreement for Respondents' bargaining unit employees. The Acting General Counsel further alleges that since on or about October 28, 2011, Respondents have to refused to execute the collective-bargaining agreement, thereby violating violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees.

¹ All dates are in 2011, unless otherwise indicated.

Respondents have filed answers denying the violations alleged in the complaint. Respondents also maintain that this case should be dismissed because the Union did not serve Respondents with a copy of the unfair labor practice charge in this case within six months of the alleged violation, as required by Section 10(b) of the Act.

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On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel, the Union and Respondents, I make the following

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FINDINGS OF FACT

I. JURISDICTION

Standard Parking, Imperial Parking, Ampco System Parking d/b/a ABM Parking Services, LAZ Parking and Interpark are all corporations that have offices and places of business in Chicago, Illinois, where they each are engaged in the business of parking garage operations. At all material times, Standard Parking, Imperial Parking, Ampco System Parking d/b/a ABM Parking Services, LAZ Parking and Interpark each: purchased and received, at their respective facilities, goods and materials valued in excess of \$5,000 from points outside the State of Illinois; and derived gross revenues in excess of \$500,000. Standard Parking, Imperial Parking,

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After the trial, Respondents filed a motion to correct the transcript and supplement the record. Respondents' motion to correct the transcript was unopposed. Accordingly, I hereby grant Respondents' motion to correct the transcript, and admit Exhibit A of that motion into evidence as Respondents' exhibit 34.

I hereby deny Respondents' motion to supplement the record. Respondents' tendered a copy of an email that Fred Schwartz sent on October 28, 2011 at 11:09 a.m., and maintained that the email should be received into evidence as Respondents' exhibit 33 because it shows the recipients of the email (the text of the email itself is already in the record – see, e.g., GC Exh. 21). I do not see a basis for allowing Respondent to supplement the record with information that it could have presented during the trial, at a time when the other parties would have been in a position to respond to the exhibit and cross examine witnesses about its authenticity and relevance (among other issues). Moreover, in light of my decision to dismiss the complaint in its entirety, Respondents' request to supplement the record is moot.

Finally, I note that while the exhibit files generally are correct, Respondents' exhibit 6 was never admitted into the evidentiary record, and thus should be removed from the exhibit files. (See Transcript (Tr.) 252–253, 808.)

The transcripts in this case generally are accurate, but I hereby make the following corrections to the record: page 378, l. 15: "It is a form" should be "Sustained as to form"; page 471, ll. 2–3: should read "look at the facts in the light most favorable to the Acting General Counsel"; page 547, l. 4: "four" should be "for"; page 590, l. 20: "by" should be "barring"; page 621, ll. 18 and 21: "assisted parking" should be "System Parking"; page 675, ll. 19–20: "ask" should be "as to"; page 758, l. 18: "hard top" should be "laptop"; page 760, l. 18: "interject" should be "the rejected exhibits file"; page 761, l. 2: "not compliant" should be "noncompliance"; page 773, l. 12: "grounding" should be "rounding"; page 792, l. 22: "included" should be "excluded"; and page 809, l. 4: should read "a rebuttal case?"

Ampco System Parking d/b/a ABM Parking Services, LAZ Parking and Interpark each admit, and I find, that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

1. Overview of Respondents and their operations

Standard Parking, Imperial Parking, Ampco System Parking d/b/a ABM Parking Services, LAZ Parking and Interpark are each in the business of operating parking garages. Depending on the location, a company might (for example): (a) manage a parking garage for a client who pays a fee and is responsible for all expenses; (b) operate a parking garage that the company has leased from another entity; or (c) operate a parking garage that it owns. (Tr. 472–473, 526, 592, 634–635.)

The Association negotiates collective-bargaining agreements on behalf of parking companies who choose to participate in coordinated bargaining with the Union. The Association's bargaining representative acts as the spokesperson for all parking companies that have chosen to participate in coordinated bargaining, and aims to negotiate a single set of collective-bargaining agreement provisions that will apply to each company. Each participating company, however, remains responsible for signing the resulting collective-bargaining agreement.³ (Tr. 45–46, 93, 293, 567–568, 591–592, 622–624, 644–645, 753–754.) Attorney Fred Schwartz served as the Association's bargaining representative for the 2006–2011 collective-bargaining agreement between the Union and Respondents that covers commercial and residential parking garages.⁴ (Tr. 51–52, 462, 675–676.)

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2. Overview of the Union

The Union represents approximately 6,800 members in several industries (including the parking industry), primarily in and around Chicago. (Tr. 44, 92, 291.) For approximately the past 30 years, Respondents have recognized the Union as the exclusive collective-bargaining representative of their respective employees in the following appropriate bargaining unit:

³ In practice, each company received a collective-bargaining agreement with only its name on the cover sheet. The terms of the contracts offered to each company, however, were identical. (Tr. 622–624, 785–786.)

Some of Respondents' witnesses testified that they retained the right to approve or disapprove any agreements that the Association reached during negotiations. (Tr. 567–568, 591–592, 644–645.) I do not find, however, that Respondents notified the Union that Schwartz' authority to negotiate was limited, and to the extent that witness Jim Buczek testified that Respondents did give such notice (see Tr. 645), I do not credit that testimony because it was tentative in nature and was not corroborated by other evidence.

⁴ A commercial parking garage is a parking garage where over half of the parking spaces are available for the general public (as opposed to building residents). A separate collective-bargaining agreement covers valet parking locations. (Tr. 115, 301.)

All employees of the Employer, including but not limited to: Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors, customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining unit work.

(See GC Exh. 7, Article 1, Section 1.1 (2006–2011 collective-bargaining agreement); see also GC Exhs. 5–6, Article 1, Section 1.1 (1996–2001 and 2001–2006 collective-bargaining agreements); GC Exh. 1(c), par. VIII(b) (bargaining unit description that Respondents admitted in their answers to the complaint).) Respondents' recognition of the Union has been embodied in a number of successive collective-bargaining agreements, with the most recent agreement being in effect from November 1, 2006, to October 31, 2011. (See GC Exh. 7; see also Tr. 49.) In general, the Union and Respondents have had good labor-management relations and have resolved contract negotiations without any work disruptions. (Tr. 76.)

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3. Wages in previous collective-bargaining agreements

Generally speaking, Respondents rely on three factors to calculate employee hourly
wages: (a) wage scales, which set minimum hourly rates based on when the employee was hired
and how long the employee has been employed under the current collective-bargaining
agreement (see, e.g., GC Exh. 7, Article 8, Sections 8.2–8.3); (b) annual raises that are
established in the collective-bargaining agreement (see, e.g., GC Exh. 7, Article 8, Section 8.1);
and/or (c) whether the employee's job responsibilities warrant an hourly rate that exceeds the
minimum rates stated in the wage scales.⁵ The issues at stake in this case center around whether
the parties reached an agreement on the wage scales that would apply under the 2011–2016
collective-bargaining agreement.

To understand the parties' current disagreement about the wage scales, it is important to be familiar with how the wage scales have changed over the years. In the 1996–2001 and 2001–2006 collective-bargaining agreements, the parties agreed to use two wage scales, or "tiers," to establish minimum hourly wages. Specifically, one wage tier applied to existing employees, while the other wage tier applied to employees who were hired after the November 1 effective date of the collective-bargaining agreement (November 1, 1996 for the 1996–2001 agreement, and November 1, 2001 for the 2001–2006 agreement). While new hires were offered lower minimum hourly wages than existing employees, their wage tier included higher "wage progressions" that (at least in theory) enabled their wages to catch up to the wages of existing employees by the end of the 5–year contract term. (GC Exh. 5, Article 7; GC Exh. 6, Article 8; see also Tr. 57–60, 65–66, 118–119, 240–241, 719.)

⁵ Employees who were being paid wages above the minimum rates set forth in the wage scales still received annual raises (i.e., if an employee was being paid above the wage scales at a rate of \$25/hour, that employee would receive an annual raise every November 1 as stated in the contract – the wage scales would not be applicable). (See Tr. 72–73, 247–250.)

⁶ Although the wage tiers in the contract specified minimum hourly wages, individual employees could earn a higher hourly wage if their employer deemed it appropriate based on their job duties or other factors.

For the 2006–2011 collective-bargaining agreement, the parties retained the system of having different wage tiers for existing employees and new hires (with new hires defined as any employees hired on or after the November 1, 2006 effective date of the contract). However, the parties did not continue the practice of having the wages of new hires catch up to the wages of existing employees by the end of the contract. Instead, to account for the downturn in the economy and also offset some increased benefits that the Union requested, the parties agreed that the wage tier for newly hired employees would have minimum rates that were \$2 per hour less than the wages of existing employees who worked under the contract for the same time period. (GC Exh. 7, Article 8; see also Tr. 246–247, 530–531, 640, 718–719.)

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B. Negotiations for 2011–2016 Collective-Bargaining Agreement

1. August 2011 – the parties prepare for negotiations

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On August 3, John Coli, Sr. (the Union's secretary-treasurer) sent letters to Respondents to notify them that the existing collective-bargaining agreement would be expiring on October 31, and that the Union "wished to re-open our present agreement in its entirety." (GC Exh. 2.) The Union noted that the Chicago Parking Association negotiated the expiring contract, and then asserted as follows regarding the anticipated negotiations with the Association:

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If you fail to notify the Union within five (5) calendar days of receipt of this letter that you wish to negotiate separately from the Association, your silence will be interpreted as your full and final consent to being represented at the bargaining table by the Association bargaining committee and that you will be bound by any agreement negotiated by the Association with the Union. We hope to be able to arrive at an agreement that will be satisfactory to both parties at an early date.

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(GC Exh. 2; see also Tr. 96–99, 294–295.)

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On August 22, Fred Schwartz, in his capacity as the Association's spokesperson, emailed Union president John Coli, Jr. to discuss possible dates to begin negotiations. Schwartz also

⁷ The parties also agreed that Respondents would pay employees at residential parking locations different wages than employees at commercial parking locations. Thus, the collective-bargaining agreements included two wage tiers for residential location employees, and two wage tiers for commercial location employees. (GC Exh. 7, Article 8; see also Tr. 58–59 (noting that before 2006, the parties negotiated separate contracts for residential and commercial parking locations).) The difference in wages between residential and commercial parking locations is not material to the issues in this case.

⁸ To illustrate, an existing employee who worked at a commercial parking location for the entire five-year contract term would have a minimum hourly wage of \$16.15, while a newly hired employee at the same location who worked the entire five-year contract term (say, from November 1, 2006 onward) would have a minimum hourly wage of \$14.15. (GC Exh. 7, Article 8, Section 8.2.)

⁹ In connection with scheduling negotiations, Coli, Jr. mentioned to Schwartz that it would be good to get negotiations done sooner rather than later so the Union would have time to ratify the new contract. (Tr. 225–226, 752–753; GC Exh. 8.) At trial, Coli, Jr. explained that his father (Coli, Sr.) was running for Central Regional International Vice President in fall 2011. Coli, Jr. believed that "having no contract [with the Association] in the hands of the people while ballots are out for the international [union] presents a political problem for me and for my father." (Tr. 226.) I do not find that Coli, Jr. made

requested "a list of those employers who, based on your recent correspondence, have NOT opted out of coordinated bargaining," or "[i]n other words, a list of all those employers that will be covered by our negotiations." (GC Exh. 8; see also GC Exh. 9 (September 6 email in which Schwartz again requested a list of employers who did not opt out); Tr. 104–106, 227–228, 297, 462–465, 754–755, 763–764.) On September 9, Stephanie Brinson, the Union's general counsel, provided Schwartz with a list of the employers who would be participating in contract negotiations. (GC Exh. 10(a); see also Tr. 106, 108, 229, 295–296.) Respondents were included on the Union's list of employers that would be participating in negotiations between the Association and the Union. (GC Exh. 10(b); see also Tr. 101, 108–109, 296–297, 465, 570–571, 621–622, 689.)

2. September 27 – the first bargaining session

On September 27, the parties met for their first bargaining session. John Coli, Jr. served 15 as the Union's chief spokesperson, while Fred Schwartz served as the Association's chief spokesperson. 11 (Tr. 110, 112–113, 298, 480–481, 532, 644.) At the meeting, the Union provided Respondent with its initial contract proposal, which generally included "redlined" notations to indicate how the proposal differed from the expiring collective-bargaining agreement. On the issue of wages, the Union proposed that Respondents agree to annual \$1-per-20 hour wage increases that would take effect each year on November 1 (starting with November 1, 2011, the proposed effective date of the contract). (GC Exh. 11, Article 8, Section 8.1; see also Tr. 299–300, 484, 533, 604–605, 642–643.) The Union also proposed wage scales for work performed at commercial and residential locations, with one wage tier applying to employees hired before November 1, 2011, and the other wage tier applying to employees hired on or after 25 November 1, 2011. The wage scales for commercial locations, which (as noted in the Union's proposal) were not in redline format, 12 were as follows:

COMMERCIAL WAGE RATES PER HOUR HIRED PRIOR TO NOVEMBER 1, 2011

Start	6 Months	1 Year	2 Years	3 Years	4 Years	5 Years

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ratification a condition precedent to the parties reaching an agreement when he made these remarks to Schwartz.

Sixty-four of the approximately 120 parking garage employers in the Chicago area were slated to participate in the Association's negotiations with the Union. The most significant "opt-outs" were Central Parking and Apartment Building Owners and Managers Association (ABOMA), though each of those entities subsequently reviewed and agreed to the contract that the Union presented after negotiations with the Association. (Tr. 229–230; GC Exh. 8 (Coli, Jr. stated on August 22 that Central Parking opted out); see also Tr. 59 (discussing ABOMA).)

John Coli, Sr. and Stephanie Brinson were also present for the Union, while Schwartz was joined by the following representatives from individual parking garage employers: Jim Buczek (Standard Parking); John Daniels (AMPCO System Parking d/b/a ABM Parking Service); Tony DiPaolo (LAZ Parking); Michael Prussian or Jim Doria (Interpark); and Eric Uhlig (Imperial Parking). (Tr. 110, 262, 297–298, 532, 603, 604–641.)

¹² Coli, Jr. explained that the Union did not put the wage scales in redline format because the redlining process would make the scales look confusing and messy because rows and tables in the scales could be displaced. (Tr. 280–281.)

							or more
11/1/11	\$11.45	\$12.20	\$12.95	\$13.70	\$14.45	\$15.20	\$17.15
11/1/12	XXX	XXX	\$13.95	\$14.70	\$15.45	\$16.20	\$18.15
11/1/13	XXX	XXX	XXX	\$15.70	\$16.45	\$17.20	\$19.15
11/1/14	XXX	XXX	XXX	XXX	\$17.45	\$18.20	\$20.15
11/1/15	XXX	XXX	XXX	XXX	XXX	\$19.20	\$21.15

COMMERCIAL WAGE RATES PER HOUR HIRED ON OR AFTER NOVEMBER 1, 2011

	Start	6 Months	1 Year	2 Years	3 Years	4 Years	5 Years
							or more
11/1/11	\$9.70	\$10.15	XXX	XXX	XXX	XXX	XXX
11/1/12	\$10.70	\$11.15	\$11.90	XXX	XXX	XXX	XXX
11/1/13	\$11.70	\$12.15	\$12.90	\$13.65	XXX	XXX	XXX
11/1/14	\$12.70	\$13.15	\$13.90	\$14.65	\$15.40	XXX	XXX
11/1/15	\$13.70	\$14.15	\$14.90	\$15.65	\$16.40	\$17.15	\$19.15

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(GC Exh. 11, Article 8, Section 8.2 ("XXX" entries added to denote entries that were blank in the proposed wage scales); see also id., Section 8.3 (wage scales for residential locations, which are identical except that all wages are \$0.75 higher); Tr. 113–118, 301–303, 515–516, 688).)¹³ The Union's proposed wage scales were similar to previous collective-bargaining agreements in that they used the November 1 effective date of the contract as the cutoff date for the two wage tiers. (Tr. 118–119, 303–304, 516–517, 576–579 (discussing the two wage tier framework used in the 1996–2001, 2001–2006 and 2006–2011 collective-bargaining agreements).) The parties did not discuss the fact that "new hires" under the expiring 2006–2011 contract would become old hires under the Union's proposed contract, and thus receive an immediate \$2/hour raise (plus the \$1/hour annual wage increase) based on the updated wage tiers.¹⁴ (Tr. 485, 533–534, 605–606, 643, 647–648.) Nor did the parties discuss how the Union came up with the wages in the proposed scales.¹⁵

During the trial, the parties also referred to Respondents' exhibits 4 and 5 when discussing the Union's September 27 contract proposal. The wage tiers in those exhibits are identical to the wage tiers in General Counsel exhibit 11.

To illustrate, under the 2006–2011 agreement, a commercial parking location employee hired before November 1, 2006, would have a minimum wage rate of \$16.15/hour upon accruing 5 or more years of experience, while a commercial parking location employee hired on or after November 1, 2006, would have a minimum wage rate of \$14.15/hour upon accruing 5 or more years of experience. (GC Exh. 7, Article 8, Section 8.2.) Under the wage tiers in the Union's proposed 2011–2016 contract, all employees with five or more years of experience who were hired before November 1, 2011 would be combined in a single tier with a \$17.15/hour minimum wage rate. (GC Exh. 11, Article 8, Section 8.2; see also Tr. 570.)

With previous contracts, the parties created the wage scales for "existing employees" by referring to the expiring contract and adding the agreed-upon annual wage increase to the wages shown in the final year (row) of the wage scales for new hires. Thus, if a new hire earned \$9.25 as a starting wage in the final year of the expiring contract, the starting wage for an existing employee under the new contract would be \$9.25 plus the annual wage increase. The wage scales in the Union's September 27 proposal, however, did not follow that formula, and it is not clear what alternative formula the Union used to create

Respondents also presented their initial proposal at the September 27 session. On the issue of wages, Respondents proposed to freeze wages for three years, and also proposed a "3rd Tier" that would eliminate wage progression and thus limit employees in that tier to only receiving annual salary increases. (GC Exh. 12, page 2 (discussing Article 8); see also Tr. 120, 125–126, 305, 486–488, 510–511, 535–536, 644, 646.) The parties did not reach any tentative agreements on September 27, but did agree to convene for further bargaining on October 7. ¹⁶ (Tr. 126–127, 306.)

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3. October 7 – the second bargaining session

At the next bargaining session, held on October 7, the parties focused their efforts on noneconomic issues.¹⁷ For the most part, the discussion went smoothly and the parties reached tentative agreements on most, if not all, noneconomic issues.¹⁸ The parties therefore adjourned with the plan of reconvening on October 12. (Tr. 127–129, 307–312, 536, 606–607, 648.)

4. October 12 – the final bargaining session

On October 12, the parties resumed their work on the economic issues, with Coli, Jr. and Schwartz continuing in their roles as spokespersons for the Union and the Association, respectively. On the issue of wages, the Union reduced its proposed annual raises from \$1/hour to \$0.55/hour. The Union also proposed to maintain the two wage tiers that it set forth in its initial (September 27) proposal, with November 1, 2011 being the cutoff date between the two tiers. As its counter offer, the Association proposed a one-year wage freeze, and also proposed eliminating the 6-month column in the wage scales (such that no wage increase would occur when a new hire reached the 6-month mark in his or her employment).

Ultimately, the Union stuck to its offer of a \$0.55/hour annual raise, but agreed to eliminate the 6-month column in the wage scale as long as employees still reached the same hourly rate in the 1-year column. The Union characterized its offer as final, and warned the Association that it might not be willing to work with the Association in opposing a new city

the wage scales in that proposal. See fn. 21, infra (noting that on October 18, the Union began circulating draft contracts that contained different wage scales than the scales that the Union proposed on September 27).

I do not credit Schwartz's testimony that Coli, Jr. told the Association and Respondents that any agreement the Union reached in bargaining would be tentative until ratified by Union membership. (See Tr. 762–763.) Schwartz' testimony on that point was not corroborated by other evidence (see, e.g., Tr. 497 (DiPaolo testimony that the parties "never really discussed if there was a need to ratify")), and the evidentiary record shows that while Coli, Jr. occasionally mentioned the ratification process when he communicated with Schwartz, he never took the position that ratification was a condition precedent to an enforceable agreement.

¹⁷ Coli, Jr. served as the Union's chief spokesperson at the October 7 meeting, while Schwartz filled that role for the Association. (Tr. 127–128, 307.)

Occasionally during the October 7 session, Coli, Jr. asserted that he would not be able to get employees to approve some of the Association's proposals. Coli, Jr. did not say, however, that ratification was a prerequisite to the parties working out a valid and effective contract. (Tr. 606–607, 624–625.)

congestion tax if the Association did not accept the Union's offer.¹⁹ The Association stated that it would consider the Union's offer and respond to the Union by email with its final offer. Accordingly, the parties adjourned the bargaining session. Once again, the parties did not discuss the fact that "new hires" under the expiring 2006–2011 contract would become old hires under the Union's proposed contract, and thus receive an immediate \$2/hour raise based on the updated wage tiers. (Tr. 129–134, 312–318, 363–364, 489–494, 536–539, 607–608, 648–653, 708–709.)

5. October 13 – the Association makes its final offer

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On October 13, the Association discussed the Union's offer in a conference call, and decided to accept the Union's offer and move forward with opposing the congestion tax. Accordingly, Schwartz sent Coli, Jr. an email with the Association's final offer, in which the Association agreed to the Union's request for \$0.55/hour annual raises "with scales proportionate to prior [collective-bargaining] agreement," and reiterated its position that the parties should eliminate the 6-month wage increase (in the wage scales) for new hires. (GC Exhs. 13(a)–(b) (referencing Article 8, Sections 8.1 and 8.2 of the contract); see also Tr. 134–136, 318–319, 495, 539–540, 560–561, 611–612, 653–654.)

Later that same day, Coli, Jr. responded to Schwartz with an e-mail to clarify certain details. In pertinent part, Coli, Jr. stated as follows in his e-mail:

For Wages: While we did agree that we would remove the 6th month increase, the proportional 1 year wage rate would remain the same. In other words, they get the same amount of total raise but not until the year anniversary. . . .

With those points understood, I believe we have a Tentative Agreement that we can begin to finalize. Thanks everyone for their time and effort in getting to this point.

30 (GC Exh. 14; see also Tr. 136–137, 513, 540–541, 655, 756.) Coli, Jr. also notified the PILMC's public relations firm that it could proceed with plans to oppose the new city congestion tax. (R. Exh. 28; see also Tr. 670, 710–711.)

On October 14, Schwartz advised Coli, Jr. that "[w]e are in accord with [the points raised in Coli, Jr.'s October 13 email]. We look forward to a ratification." (GC Exh. 15; see also Tr.

¹⁹ At the time of the October 12 bargaining session, the city of Chicago was considering implementing a new congestion tax that would increase the parking taxes that the city collected. Parking garage employers, including Respondents, opposed the tax, and wanted the Parking Industry Labor Management Committee (PILMC) to lobby against the tax. Since the PILMC board is composed of two employer representatives (Buczek and Prussian) and two Union representatives (Coli, Jr. and Coli, Sr.), the Union was in a position to block the PILMC from taking action because a majority of the PILMC board would have to approve any lobbying effort. (Tr. 490–492, 537, 669–671, 707–709; see also Tr. 705–707 (describing the PILMC).)

²⁰ In stating that the wage scales should be proportionate to the prior collective-bargaining

In stating that the wage scales should be proportionate to the prior collective-bargaining agreement, the Association meant that wage scales in the 2011–2016 contract should maintain the \$2/hour difference between the wages of new hires and existing employees that was established in the 2006–2011 contract. (Tr. 551–552, 654.)

138, 497, 542, 562–563, 655–656, 766–767; see also Tr. 574, 613 (Respondents held another conference call to confirm they were comfortable with the clarifications that Coli, Jr. raised in his October 13 email).) That same day, the Union posted a "Bargaining Update" on its website to announce that it had "reached an agreement with management on a new five-year Master Parking Agreement" that (among other things unrelated to wages) "secured annual raises of \$0.55." (R. Exh. 12; see also Tr. 543–546, 552–558 (describing how the bargaining update was located online).)

6. October 18–28 – efforts to finalize the collective-bargaining agreement

On October 18, Brinson sent Schwartz a draft collective-bargaining agreement for review. The draft included wage scales that combined all employees hired before November 1, 2011 into a single group (meaning, as previously noted, that employees hired between November 1, 2006, and October 31, 2011, would see their minimum hourly wages jump by \$2). Specifically, the updated wage scales stated as follows:

COMMERCIAL WAGE RATES PER HOUR HIRED PRIOR TO NOVEMBER 1, 2011

	Start	1 Year	2 Years	3 Years	4 Years	5 Years
						or more
11/1/11	\$11.80	\$13.05	\$13.80	\$14.55	\$15.30	\$16.70
11/1/12	XXX	\$13.60	\$14.35	\$15.10	\$15.85	\$17.25
11/1/13	XXX	XXX	\$14.90	\$15.65	\$16.40	\$17.80
11/1/14	XXX	XXX	XXX	\$16.20	\$16.95	\$18.35
11/1/15	XXX	XXX	XXX	XXX	\$17.50	\$18.90

COMMERCIAL WAGE RATES PER HOUR HIRED ON OR AFTER NOVEMBER 1, 2011

	Start	1 Year	2 Years	3 Years	4 Years	5 Years
						or more
11/1/11	\$9.80	XXX	XXX	XXX	XXX	XXX
11/1/12	\$10.35	\$11.60	XXX	XXX	XXX	XXX
11/1/13	\$10.90	\$12.15	\$12.90	XXX	XXX	XXX
11/1/14	\$11.45	\$12.70	\$13.45	\$14.20	XXX	XXX
11/1/15	\$12.00	\$13.25	\$14.00	\$14.75	\$15.50	\$16.90

(GC Exh. 16(b), Article 8, Section 8.2.)²¹

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To create these tables, the Union worked from the wage scales in the 2006–2011 contract. Specifically, to create the wage scales above for employees hired prior to November 1, 2011, the Union took the final row of the new employee wage scale in the 2006–2011 contract, and added 55 cents to each entry to account for the annual raise, plus \$2 to enable employees hired under the 2006–2011 contract to "catch up" to the old employee wage scale. Wages for new hires under the Union's draft 2011–2016 contract trailed \$2 per hour behind the wages for old employees. (Compare GC Exh. 7, Article 8, Section 8.2 with GC Exh. 16(b), Article 8, Section 8.2.) This formula produced different wage scales than the

When Brinson followed up with Schwartz on October 21 to see if he had reviewed the draft, Schwartz replied that he was traveling and would review the draft when he returned on October 24. Schwartz also asked Brinson to send him a "redlined" copy of the draft because that would make his review of the draft much quicker. (GC Exhs. 16(a), 17 (a), 35, 43; see also GC Exh. 16(b) (October 18 draft of contract, which includes wage scales in Article 8); GC Exh. 17(b) (October 18 draft of contract that was attached to Brinson's October 21 email); Tr. 139–144, 319–323, 398, 767–769, 774.)

On October 24, Brinson sent Schwartz a copy of the October 18 draft contract in Microsoft Word format (previous versions had been in PDF format). Schwartz replied on October 25 to again ask for a redlined version of the draft. (GC Exhs. 18(a)–(b), 19; Tr. 144–147, 323–324; see also Tr. 679–682 (Schwartz sent a copy of the Microsoft Word version of the October 18 draft to Buczek, but Buczek did not review it because the draft was not in redlined format).) Later on October 25, Brinson responded as follows:

Fred,

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Please see attached. This is a redlined version off of our initial proposals to the CPA this year, not the prior contract. I just spent most of my morning today comparing this attached version with the one that I sent to you previously, and I believe the only difference is that in this attached redlined version, I did not include the wage scales. The wage scales are in the prior [two] versions that I sent to you. I hope this helps you out.

For future reference, I believe that MS Word has a function where you can compare two files and highlight any differences. So you could take the Word file that I sent to you and compare it with your file of the prior contract (which I assume you have). Maybe some young, overpaid (?), tech-savvy associate at your firm can help you out next time?

Please contact John if you have any questions/concerns regarding the language.

Thank you, Stephanie

35 (GC Exh. 20(a); see also GC Exh. 20(b) (redlined version of October 18 draft, without wage scales); GC Exh. 44 (Schwartz subsequently responded that he did not have a copy of the prior contract in Microsoft Word format); Tr. 147–149, 324–326, 775.) Schwartz forwarded a copy of the redlined draft to Buczek and Prussian.²³ (Tr. 657–659, 743.)

Union proposed on September 27 (even after taking the different annual raises into account). (Compare Findings of Fact, Section II(B)(2), supra.)

²² Schwartz forwarded a copy of the October 18 draft contract to Buczek. Buczek then asked Schwartz for a redlined version of the document. (Tr. 656–657, 678–679.)

According to Schwartz, Prussian instructed him to only provide the draft agreement to Buczek and Prussian (and not to the other Respondents). Schwartz complied with that instruction until the end of the week, when Prussian instructed Schwartz to send a copy of the draft agreement to all employers participating in the negotiations. (Tr. 743–744.)

In the morning on October 28, Schwartz sent an initial round of comments to Brinson and Coli, Jr. about the draft agreement. Specifically, Schwartz requested that the Union:

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- (a) Remove language that included grandparents and significant others in the definition of "immediate family members" for purposes of employee funeral leave (Article 13, Section 13.1);
- (b) Correct certain language relating to employee vacations (Article 14, Sections 14.1–14.3);
- (c) Correct the amounts that Respondents would contribute to the Health and Welfare, Pension and/or Legal and Educational Assistance Funds for the years 2015 and 2016 (Article 20, Section 20.4(a));²⁴ and
- (d) Make a minor language change to the drug, alcohol and background testing that an employer may perform when acquiring a parking location, and add language stating that if the "acquiring employer" terminates an employee based on his or her background check, the former employer has no obligation to retain the employee (Article 40, Section 40.5).

(GC Exh. 21; see also Tr. 149–151, 327–329, 775–776, 802–804.) Schwartz also noted that the Employers' bargaining committee expected to complete its review of the draft agreement "today," and that he would forward any additional comments to the Union. (GC Exh. 21.)

By response email sent at approximately 11:54 a.m., Coli, Jr. informed Schwartz that the Union agreed to all of the Association's requested changes except for the proposed changes to Sections 14.2 and 40.5 of the draft. Coli, Jr. added that he would ask Brinson to make the changes that the Union agreed to, and stressed that "[w]e need to get this done today in order to move our ratification process forward." (GC Exh. 21; Tr. 151, 278–279, 329, 751.)

At 12:03 p.m., Schwartz notified Coli, Jr. that the Association accepted the Union's position on Section 14.2. (GC Exh. 22; Tr. 151–152.) And, at 12:05 pm, Brinson sent Schwartz an updated version of the draft agreement that incorporated the agreed changes (with no wage scales included). (GC Exh. 23(a)–(b); Tr. 153–154, 329–330.)

To resolve their disagreement about Section 40.5, Coli, Jr. and Schwartz discussed the issue by telephone, and then Schwartz circulated a revised draft agreement that included updated language in Section 40.5. In the email that accompanied the revised draft, Schwartz stated: "Per my conversation with [Coli, Jr.], I have made one revision to 40.5. Subject to that, as well as subject to the appropriate wage progression schedules to be inserted per your earlier email, we are in accord with the attached [draft]." (GC Exh. 25(a) (noting that Schwartz sent his email at 12:57 p.m.); see also GC Exhs. 24, 25(b); Tr. 155–159, 331–332, 725, 728–731, 776–778.) Brinson responded at 1:38 p.m. by sending Schwartz an updated draft agreement that included

²⁴ The benefit contribution corrections that Schwartz identified were based on a rounding error that the Union made when calculating the contribution amounts. (Tr. 150, 328–329, 398–399 (noting that the Union rounded \$89.46 to \$90 instead of \$89).)

²⁵ Coli, Jr. sent his email to Brinson, Schwartz, Buczek (Standard Parking), Prussian (Interpark), Rob Higgins (Interpark) and Jim Doria (Interpark). (GC Exh. 21.)

²⁶ Schwartz sent his email to Coli, Jr., Brinson, Buczek (Standard Parking), Prussian (Interpark) and Jim Doria (Interpark). (GC Exh. 25(a).)

wage scales and made another minor change to Section 40.5. Brinson advised Schwartz that "all other changes, which have been agreed upon, have been finalized." (GC Exh. 26(a)–(b); Tr. 160–161, 332–333, 778–782.) When Schwartz replied that the Association was fine with Union's changes to Section 40.5, Brinson (at 3:07 p.m.) sent a final draft to Schwartz. (GC Exhs. 27(a)–(b); Tr. 162–164, 334–338, 782–783.) Schwartz forwarded the final draft to Buczek later in the afternoon on October 28. (Tr. 684–685; see also Tr. 734 (Prussian also received a copy of the draft on or about October 31).)

7. The Union prepares for a ratification vote

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Shortly after concluding the October 28 communications with Schwartz about the contract, the Union began preparing documents to send to its members to begin the contract ratification process. The Union provided the following information in the cover letter that it sent to its members:

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Dear Parking Industry Member:

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Teamsters Local 727 representatives spent the last several weeks negotiating with parking employers for a new five-year Master Parking Agreement. The new contract builds on an already strong contract. It includes across-the-board improvements and protections like annual raises and no health insurance co-pays.

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The bargaining committee, which fought hard to secure the best possible contract for more than 3,000 parking industry members, strongly recommends that you vote to ratify the contract.

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Enclosed you will find a copy of the contract in its entirety, a contract summary sheet, a ballot and a stamped return envelope. To vote, simply mark your ballot, place it in the pre-paid envelope and drop it in the mail. We encourage you to return your ballot as soon as possible to ensure it is counted.

Ballots must be received no later than Tuesday, November 15, 2011, to be counted.

(GC Exh. 36; see also Tr. 167–168, 273–274, 338–339.) The Union mailed the first round of ballots on October 31, and continued mailing ballots through November 3.²⁷ (R. Exh. 8; Tr. 168, 269–271, 283–284.)

8. Respondents object to the wage scales in the October 28 draft contract

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Also on October 28, Schwartz sent a copy of the 2011–2016 draft contract to Eric Uhlig (from Imperial Parking) for review. Upon reviewing the wage scales in the document, Uhlig noticed that employees hired between November 1, 2006, and October 31, 2011, would receive

On October 30, Coli, Jr. notified Schwartz (as well as Buczek, Prussian and two other representatives from Interpark) that Central Parking, the largest parking employer to opt out of the Association's contract negotiations with the Union, had agreed to sign the October 28 version of the 2011–2016 agreement. (GC Exh. 28; Tr. 165–166.)

an immediate raise of \$2.55 per hour on the effective date of the new contract. Uhlig sent an email to Schwartz and each of Respondents' representatives to raise concerns about the issue.²⁸ (Tr. 547–548, 563–564, 568.)

On November 2, Schwartz emailed Coli, Jr. to assert that the wage scales in the October 28 draft contract were the product of a "mutual mistake in drafting" and thus needed to be corrected. Specifically, Schwartz stated:

John,

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The review of the wage scale indicates something that we obviously should have raised, as we believe it is a mutual mistake in the drafting. Specifically, the issue is the wage scale for those employees hired after November 1, 2006. Under the scale as drafted, effectively we take everyone that was in Tier 2 under the old contract and push them into Tier 1 which would include \$2+ raises. The scale as drafted would then reset the Tier 2 deadline from 2006 to 2011, something which we do not believe was ever discussed or agreed to, particularly within the context of our agreement for 55 cent per hour wage increases. We believe the intention of the parties was to maintain the deadline between the two tiers at 2006, as previously negotiated. Therefore, the wage scale for any employees hired after November 1, 2006, would be like this:

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	Start	1 Year	2 Years	3 Years	4 Years	5 Years
11/1/2011	9.80	11.05	11.80	12.55	13.30	14.70
11/1/2012		11.60	12.35	13.10	13.85	15.25
11/1/2013		12.15	12.90	13.65	14.40	15.80
11/1/2014		12.70	13.45	14.20	14.95	16.35
11/1/2015		13.25	14.00	14.75	15.50	16.90

Please review this and let us know your thoughts. For purposes of this communication, I have copied ONLY Michael Prussian and Jim Buczek. Thanks.

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(GC Exh. 29 (emphasis in original); see also Tr. 169–170, 263, 661, 748–749, 788.) Later on November 2, Coli, Jr. emailed the following response to Schwartz:

Fred.

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We have already mailed the Agreement for ratification as I notified you on Friday. The wage scale structure was in all our proposals including the final draft which you approved. There is nothing we can do to change the document now.

Uhlig's email prompted other employers to ask Schwartz for a copy of the October 28 contract draft. Schwartz provided a copy of the contract to Antonio DiPaolo (LAZ Parking) (see R. Exh. 17; Tr. 498, 501), but did not provide a copy to Jonathan (Tony) Daniels (ABM Parking) (see Tr. 614, 626). When DiPaolo reviewed the draft, he noted that Article 20, Section 20.2 included conflicting language about when employers should begin making pension contributions for new employees. (Tr. 500–503 (discussing R. Exh. 17, Article 20, Sections 20.2(c)–(d)).)

(GC Exh. 30; see also Tr. 172.) Coli, Jr. added, in another email sent minutes later, that the wage scale structure in the 2006–2011 contract "was done the same way" as the wage scale structure in the October 28 draft contract.²⁹ (R. Exh. 7.)

At Schwartz' request, the parties (including representatives from ABM Parking, Imperial Parking, Interpark and Standard Parking)³⁰ met on November 4 to discuss the Association's concerns about the wage scales. At the meeting, Prussian asserted that the wage scales were included by mistake. The Union disagreed, and Brinson went over the various draft agreements that the Union and the Association exchanged that included the wage scales that ultimately were in the October 28 final draft.³¹ Prussian then faulted Schwartz for letting the Union do the drafting, and stated that the next time the parties met, Schwartz would not be present.

With the Union adamant that the parties had an agreement, and Respondents equally adamant that they would not be signing the contract due to their objections to the wage scales, the parties turned the discussion to the issue of how they might resolve the dispute. Although the parties discussed the possibility of (among other options) taking the issue to arbitration or presenting it to the National Labor Relations Board in an unfair labor practice charge, the meeting concluded without an agreement about the contract or how to resolve the dispute. (Tr. 173–176, 286, 340–343, 547–548, 627–628, 663–664, 736, 738.)

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9. Respondents formally reject the wage scales from the October 28 draft

On November 8, Prussian hand delivered a letter to the Union in which the Association formally rejected the wage scales that were included in the October 28 draft contract, and offered instead to grant employees annual raises of 55 cents per hour. The Association (via Schwartz) stated as follows in the letter:

Dear John:

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This letter will confirm our meeting on Friday, November 4, 2011 and the parties' disagreement over the course of negotiations, the parties' respective offers, and the terms of the parties' tentative agreement. While the meeting was productive, and in our view reflected the maturity of the parties' relationship, the suggested resolutions offered by Local 727 were unsatisfactory.

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In view of the parties' marked difference of opinion as to the economic terms of the parties' respective offers and the substance of the parties' tentative agreement . . . , the

²⁹ In both of his November 2 emails to Schwartz, Coli, Jr. followed Schwartz's lead and only copied Prussian and Buczek (and not the other Respondent's representatives). (GC Exh. 30; R. Exh. 7.)

Anthony DiPaolo did not attend the November 4 meeting on behalf of LAZ Parking. (Tr. 504.) To the extent that other witnesses testified that Respondents were all present at the November 4 meeting, I have not credited their testimony on that issue. Regardless, the record does show that all Respondents (including LAZ Parking) participated in crafting a response to the Union about the disputed wage scales. (See Tr. 504–506 (discussing LAZ Parking's communications with other Respondents about the wage scales).)

In response to Brinson's presentation about the parties' contract negotiations, Daniels (ABM Parking) stated that Schwartz never shared the various draft contracts with him. (Tr. 342–343, 628.)

Employers hereby withdraw[] their offers or, in the alternative, revoke[] their acceptances of Local 727's proposal, relating to the second tier wage schedule.

The Employers reaffirm that all tentative agreements with the exception of wages remain in place. The Employers submit the following offer for wages: the contract anniversary wage increase shall be \$0.55 per hour each year of the contract for all employees, establish a longevity wage progression for employees hired after November 1, 2011, all other wage scales to remain in effect.

The wage table reflecting this offer is attached. The Employers are prepared to meet to continue negotiations should Local 727 deem further negotiations desirable or appropriate. Please contact me to discuss this matter further or to discuss any questions you might have.

15 (GC Exh. 31(a).) The Association's proposed wage scales stated as follows:

COMMERCIAL WAGE RATES PER HOUR HIRED AFTER NOVEMBER 1, 2006 and PRIOR TO NOVEMBER 1, 2011

	1 Year	2 Years	3 Years	4 Years	5 Years
					or more
11/1/11	\$11.05	\$11.80	\$12.55	\$13.30	\$14.70
11/1/12	XXX	\$12.35	\$13.10	\$13.85	\$15.25
11/1/13	XXX	XXX	\$13.65	\$14.40	\$15.80
11/1/14	XXX	XXX	XXX	\$14.95	\$16.35
11/1/15	XXX	XXX	XXX	XXX	\$16.90

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COMMERCIAL WAGE RATES PER HOUR HIRED ON OR AFTER NOVEMBER 1, 2011

	Start	1 Year	2 Years	3 Years	4 Years	5 Years
						or more
11/1/11	\$9.80	XXX	XXX	XXX	XXX	XXX
11/1/12	\$10.35	\$11.60	XXX	XXX	XXX	XXX
11/1/13	\$10.90	\$12.15	\$12.90	XXX	XXX	XXX
11/1/14	\$11.45	\$12.70	\$13.45	\$14.20	XXX	XXX
11/1/15	\$12.00	\$13.25	\$14.00	\$14.75	\$15.50	\$16.90

(GC Exh. 31(b).)³²; see also Tr. 176–178, 505–507, 514–515, 549–551, 564, 664–666, 738.) Coli, Jr. subsequently telephoned Prussian and Buczek and agreed that Respondents would begin

Like the Union, Respondents created these tables by starting with the wage scales in the 2006–2011 contract. Specifically, to create the wage scales for employees hired between November 1, 2006, and prior to November 1, 2011, Respondents took the final row of the new employee wage scale in the 2006–2011 contract, and added 55 cents to each entry to account for the annual raise. Unlike the Union, however, Respondents did not add an additional \$2 to enable employees hired between November 1, 2006, and October 31, 2011, to "catch up" to the old employee wage scale. Instead, those employees

applying the terms of the October 28 draft except for the wage scales. (Tr. 180–181; see also Tr. 507 (noting that the other Respondents joined in this decision).)

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10. Mid-November 2011 – Union ratifies the October 28 contract and Respondents replace Schwartz with Douglas Darch, Esq.

On November 15, the Union counted the ballots that it received and determined that its members voted to ratify the October 28 version of the contract. (GC Exh. 37; Tr. 181, 183, 343–344.) In that same time frame, Respondents removed Schwartz from his position as the Association's chief spokesperson, and replaced him with attorney Douglas Darch. (Tr. 637, 682–683, 686–687.)

On November 17, Darch contacted Coli, Jr. by telephone to introduce himself as the Association's new attorney, and to confirm the parties' agreement to implement the October 28 agreement except for the wage scales. Coli, Jr. mentioned that the Union would be sending Respondents a copy of the October 28 draft contract to sign (with the wage scales included), and Darch advised Coli, Jr. that Respondents would not be signing that document. (Tr. 184–185.)

Later on November 17, Darch sent Coli, Jr. a letter to confirm that "the members of the various bargaining units of parking lot attendants have ratified the provisions of the successor (2011–2016) collective bargaining agreement (such as its terms are). The Employers will proceed to implement the \$0.55 per hour across the board, hourly pay increase while the parties "sort out" their dispute as to the continued existence of the second tier of hourly wage rates. We understand that we will be receiving a letter from you confirming the results of the ratification votes." (GC Exh. 32.)

11. November/December 2011 – the parties circulate disputed versions of the contract for signature

On November 21, the Union sent Respondents (as well as other parking garage employers that did not opt out of the Association's negotiations) a copy of the October 28 draft contract to sign. The Union (through Coli, Jr.) stated as follows in its cover letter:

Please be advised that the enclosed Master Parking Contract negotiated between Teamsters Local Union No. 727 and the Chicago Parking Association has been ratified by the members employed by your Company.

Enclosed you will find two copies of the contract. Please execute both copies and return to me as soon as possible. For your convenience, we enclose also a self-addressed stamped envelope to return the signed contracts. The Union will then counter-sign the contract and return an original fully-executed copy to you.

essentially continued on with the same wage scale that was in the expiring contract, and only received the 55-cent-per-hour annual raises. Thus, the wages for employees hired between November 1, 2006, and October 31, 2011, continued to trail \$2 per hour behind the wages for older employees. (Compare GC Exh. 7, Article 8, Section 8.2 with GC Exh. 31(b), Article 8, Section 8.2.)

(GC Exh. 33(a)–(e) (cover letters to Respondents); see also GC Exh. 33(f) (copy of October 28 draft contract, including the disputed wage scales); Tr. 186–188, 345–346, 664, 667–668.) To date, none of Respondents have executed the October 28 draft contracts that the Union circulated. (Tr. 189, 204, 346, 668.)

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On December 13, Respondents countered by sending the Union their own version of the 2011–2016 contract. Through Darch, Respondents stated as follows:

Dear Mr. Coli:

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Enclosed herewith are collective bargaining agreements signed by [Respondents] who participated in the most recent negotiations as part of the Employer's Committee of the Employer's Parking Garage Association. . . .

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As Fred Schwartz previously advised you, the Employers do not agree that the parties either discussed or agreed (or both) to the elimination of the second tier of wages contained in the 2006–2011 collective bargaining agreement, and further, that they withdrew any offer having that effect, or revoked any agreement to a Union proposal having that effect. Consistent with Mr. Schwartz's letter, the enclosed signed agreements maintain for the term of the 2011–2016 collective bargaining agreement, the second tier of wages. In addition, the enclosed agreements provide, under Section 20.2, that pension contributions for employees hired after November 1, 2006 begin with the thirteenth month of employment. See 20.2(d).

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If the enclosed 2011–2016 Agreements meet with your approval, please sign, or cause to be signed by the appropriate Local 727 official, one of the duplicate originals for each employer and return them to us.

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(GC Exh. 34(a); see also GC Exh. 34(b) (Respondent's version of the 2011–2016 collective-bargaining agreement, with revised wage scales included); Tr. 189–190, 346, 668–669.)

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C. The Union's Unfair Labor Practice (ULP) Charge against Respondents

1. December 22, 2011 – the Union serves Darch with a copy of its ULP charge

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On December 22, the Union filed the ULP charge that initiated this case (Case 13–CA–71259). The Union named the Association and each of Respondents as the employers, and identified Darch as the employer representative. (GC Exhs. 1(a), 40, par. 1; see also Tr. 193–194, 346–347.) Darch received a copy of the ULP charge on or about December 27. (Tr. 701; GC Exh. 40, par. 1)

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GC Exh. 40, par. 1.)

At the time that the Union filed its ULP charge against Respondents, Respondents had the following registered agents that were on file with the State of Illinois and listed on a website (www.cyberdriveillinois.com) maintained by the Secretary of State of the State of Illinois:

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ABM Parking: CT Corporation System (R. Exhs. 22–23; Tr. 593.) Imperial Parking: CT Corporation System (R. Exhs. 18–19; Tr. 527.)

Interpark: Illinois Corporation Service Company (R. Exhs. 29–30.)

LAZ Parking: Illinois Corporation Service Company (R. Exhs. 13–14; Tr. 473–

475.)

Standard Parking: CT Corporation System (R. Exhs. 24–25; Tr. 636.)

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Neither the Union nor the Board served the ULP charge in this case on any of Respondents' registered agents listed above, or on Respondents directly (e.g., at their place of business). Respondents never authorized Darch to accept service of a ULP charge on their behalf. (Tr. 475–476, 528, 595, 638.)

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2. January 2012 – Respondents hire Darch to handle the ULP charge

By on or about January 4, 2012, Respondents were aware that the Union had filed the ULP charge in this case. Respondents therefore decided to retain Darch to handle the ULP charge. (Tr. 408–410, 412, 422–423, 426–427, 432–434, 446–449, 452, 475, 594–595; see also R. Exh. 27 (record of January 4 conference call that included Darch and representatives of Respondents).) Accordingly, on January 5, Darch filed notices of appearance on behalf of the Association and Respondents, and subsequently (after consulting with Respondents) provided factual and/or legal position statements to Region 13 of the Board on the following dates: January 10 and 31; February 8 and 27; and March 1. (GC Exh. 40(a), pars. 2–7; see also Tr. 410–411, 414, 423–424, 427–429, 433–435, 449–453.)

3. Communications between the parties about the ULP charge

Between January and March 2012, the Union and Respondents communicated on multiple occasions about the Union's ULP charge and whether it could be resolved. For example, in late January and early February 2012, Coli, Jr. and Darch communicated about the possibility of resolving the charge via settlement. (Tr. 194–198; GC Exhs. 38–39.) In addition, on February 29, the Union (represented by Coli, Jr., Coli, Sr. and Brinson) met with Darch, Buczek, Daniels, Jim Doria and certain other representatives of Respondents to discuss whether the ULP charge could be resolved by settlement or by other means such as arbitration. (Tr. 198–199, 347–349, 415–416, 429.) And, on March 27, Coli, Jr. and Coli, Sr. discussed the ULP charge with Buczek and Prussian when the four of them met for a PILMC meeting. (Tr. 199–200.) Notwithstanding these discussions, the Union and Respondents were not able to agree on how to resolve the issues raised in the Union's ULP charge.

³³ Buczek did not recall discussing the ULP charge at the PILMC meeting in March 2012. To the extent that Buczek later denied that he discussed the ULP charge (instead of simply stating that he could not remember), I have not credited that testimony because Buczek's initial responses on the topic of the March 2012 meeting indicate that he does not remember the meeting in detail. (See Tr. 418–419.)

³⁴ Buczek and Coli, Jr. also discussed the possibility of settling the Union's ULP charge in September 2012, but were not able to reach an accord. (Tr. 203–204.)

DISCUSSION AND ANALYSIS

A. Credibility Findings

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A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Relco Locomotives, Inc.*, 358 NLRB No. 37, slip op. at 12 (2012), enfd. _____ F.3d _____, 2013 WL 4420775 (8th Cir. 2013); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). Credibility findings need not be all-or-nothing propositions — indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Relco Locomotives*, 358 NLRB No. 37, slip op. at 12.

In this case, credibility is generally not at issue because the majority of the testimony that witnesses provided was corroborated by documentation admitted into evidence. The Findings of Fact accordingly incorporate the testimony of all of the witnesses who testified at trial, to the extent that their testimony was based on their personal knowledge and was corroborated by other evidence. To the extent that credibility issues did arise, I have stated my credibility findings in the Findings of Fact above.

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B. Should this Case be Dismissed because the Union and Acting General Counsel Did Not Serve the ULP Charge on Respondents in a Timely Manner?

Section 10(b) of the Act provides that "no complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made." The Board has interpreted this language to require personal service upon the person charged or his or her agent. *United Electrical Contractors Assn.*, 347 NLRB 1, 2 (2006).

In this case, Respondents assert that the complaint must be dismissed because neither the
Union nor the Board served the underlying ULP charge on Respondents within 6 months of the
alleged unfair labor practice. Respondents concede that the Union served a copy of the ULP
charge on Darch in December 2011, but assert that Darch was not authorized to accept service on
Respondents' behalf at that time. The Union and the Acting General Counsel maintain that
Darch had the authority to accept service on Respondents' behalf because of his status as the
Association's bargaining agent, and also maintain (in the alternative) that any defect in serving
the ULP charge was cured by the fact that Respondents received actual notice of the ULP charge
within the 6-month period specified by Section 10(b) of the Act and were not prejudiced by the

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defect in service.

1. Did the Union satisfy the requirements of Section 10(b) by serving Darch with a copy of the ULP charge?

Under agency law as well as the Federal Rules of Civil Procedure, service of process on an authorized agent constitutes effective service on the agent's principal. *United Electrical Contractors Assn.*, 347 NLRB at 2 (citing Restatement (Second) of Agency § 258 (1958), and Fed. R. Civ. Proc. 4(h)(1)). The Board has held that "[a]uthorization to accept service on behalf of a principal may be implied from the surrounding circumstances," and also has held that "under traditional rules of agency law, an agent is deemed to have authority to perform acts incidental to those expressly authorized by the principal." *United Electrical Contractors Assn.*, 347 NLRB at 2 (citing *Focus Media, Inc. v. Pringle*, 387 F.3d 1077, 1081–1083 (9th Cir. 2004), cert. denied, 544 US 923 (2005), and Restatement (Second) of Agency § 35, respectively).

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The Board applied these principles in *United Electrical Contractors Association*, a case in which the union served a copy of the ULP charge on the president of a multiemployer association (the United Electrical Contractors Association (UECA)) and named the individual respondents in the charge, but did not serve the individual respondents with a copy of the ULP charge. 347 NLRB at 10. Based on that set of facts, the Board held that "UECA had implied authority to accept service on behalf of its members because the allegations in the charge directly related to UECA's expressly authorized activities as the employer-members' bargaining agent. We accordingly find that in accepting service of the charge within the 10(b) period, UECA did so not only for itself but also for its employer-members named in the charge." Id. at 2.

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Turning to the facts of this case, it is undisputed that Respondents designated the Association (and specifically, Schwartz) as the chief spokesperson for coordinated bargaining with the Union for a successor collective-bargaining agreement in 2011. Schwartz took the lead on communicating with the Union about contract proposals, and Darch replaced Schwartz in that role in November 2011. Consistent with the Board's decision in *United Electrical Contractors Association*, I find that the Association (and Darch, as its chief spokesperson) had implied authority to accept service of the December 22, 2011 ULP charge on behalf of the Association and Respondents, each of whom was named in the charge.³⁵ The allegations in the ULP charge in this case directly related to the Association's (and Darch's) expressly authorized activities as Respondent's chief spokesperson during contract negotiations, and thus Darch is deemed to have the authority to accept service of the ULP charge about those same negotiations on Respondents' behalf.³⁶ I therefore find that the Union served all Respondents (as well as the Association) with the ULP charge within 6 months of the alleged unfair labor practice, as required by Section 10(b).³⁷

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³⁵ The fact that each of Respondents was named in the ULP charge is significant, because the Board has explained that its decision in *United Electrical Contractors Association* is predicated, in part, on the fact that the ULP charge in that case named UECA's employer-members as charged parties. See *Expert Electric, Inc.*, 347 NLRB 18, 18–19 (2006).

³⁶ I note that I do not find the fact that this case involved coordinated bargaining (instead of multiemployer bargaining, as was the circumstance in *United Electrical Contractors Association*) to be material regarding service of the ULP charge. The evidentiary record here still shows that Darch, based on his duties as the Association's chief spokesperson for contract negotiations, had implied authority to accept service of the ULP charge concerning those negotiations.

Respondents did not discuss the Board's decision in *United Electrical Contractors Association* in their brief. (See R. Br. at 39–47.)

2. Alternatively, were the requirements of Section 10(b) satisfied because Respondents had actual notice of the ULP charge within 6 months of the alleged unfair labor practice?

As an alternate theory for why this case should not be dismissed on 10(b) grounds, the Acting General Counsel and the Union assert that the requirements of 10(b) were fulfilled when Respondents received actual notice of the ULP charge within the 6-month time frame specified in Section 10(b). This alternate theory comes from the Board's decision in *Buckeye Plastic* Molding, in which the Board held "failure to make timely service of a charge on a respondent will be cured by timely service in the 10(b) period of a complaint on the respondent, absent a showing that the respondent is prejudiced by such circumstances." 299 NLRB 1053, 1053 (1990). Notably, in reaching this conclusion, the Board accepted the Ninth Circuit's rationale that actual notice (in the form of service of a complaint within the 6-month 10(b) period) "satisfied the requirements of Section 10(b), which are designed to ensure against the processing of stale claims, to ensure that the Board issues complaints only when charges have been properly filed, and to encourage an early statement of position by the party charged." Id. (citing Service Employees Local 399 v. NLRB, 798 F.2d 1245, 1249 (9th Cir. 1986). The Board also agreed that ULP charges are meant to set the machinery of an inquiry in motion, and that where a complaint is served within six months of the violation and the employer suffers no prejudice, it would serve only to elevate form over substance to find that Section 10(b) had been violated. Id.; see also American Steamship Co., 222 NLRB 1226, 1231 (1976) (noting that an error in naming the entity to be charged does not invalidate the ULP charge where the intended entity has actual notice of the charge, and that a finding that the statutory requirements of service are not met under those circumstances would "project legalism to an unwarranted length").³⁸

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In this case, there is no dispute that the Acting General Counsel did not file or serve its complaint until February 13, 2013, well after the 6-month 10(b) period.³⁹ However, Respondents do not dispute that they had actual notice of the ULP charge at least as of January 5, 2012 (well within the 10(b) period), or that they actively participated in the Board's subsequent inquiry into the ULP charge by (through Darch, their attorney) filing notices of appearance and multiple factual and legal position statements. The question of whether Section 10(b) was satisfied under an actual notice theory therefore turns on whether the Board's reasoning for the actual notice exception is limited to notice in the form of a complaint filed within the 10(b) period, or instead extends to actual notice that results from other sources of information.

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I find that the Board's reasoning in *Buckeye Plastic Molding* applies whenever a respondent has actual notice of a ULP charge within the 10(b) period, regardless of whether actual notice results from a complaint or another source of information. Where it can be shown (as here) that a respondent had actual notice of a ULP charge within the 10(b) period and that the respondent did not suffer prejudice, the policy reasons for the 10(b) requirement are satisfied because (among other things) the Board's investigation processes still commence in a timely

³⁸ Contrary to these decisions, Respondents assert that Section 10(b) "does not contemplate an actual notice standard." (R. Br. at 47.) It suffices to say in response that I am bound to follow the Board's rulings that a respondent's actual notice of a ULP charge may cure defects in service under certain circumstances.

Although the record is limited on this point, the delay in filing the complaint in this case apparently resulted from the Acting General Counsel's internal investigation and review procedures.

manner, and the party charged has a full opportunity to respond to the ULP charge. That is precisely the case here – Respondents learned of the Union's ULP charge within a matter of weeks of the Union's filing, and duly retained Darch and engaged him in responding to the ULP charge on their behalf. To find that 10(b) was violated under those circumstances (timely actual notice and no prejudice to Respondents) would indeed run afoul of the Board's caution against elevating form over substance. Accordingly, I find (in the alternative) that any defect in serving the ULP charge in this case was cured by the fact that Respondents received timely actual notice of the charge and did not suffer any prejudice resulting from defective service.

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C. Are Respondents Obligated to Execute the October 28 Version of the Contract?

It is well settled that the obligation in Section 8(d) of the Act to bargain collectively requires either party, upon the request of the other party, to execute a written contract incorporating an agreement reached during negotiations. However, this obligation arises only if the parties had a "meeting of the minds" on all substantive issues and material terms of the agreement. The Acting General Counsel bears the burden of showing not only that the parties had the requisite "meeting of the minds," but also that the document which the respondent refused to execute accurately reflected that agreement. If it is determined that an agreement was reached, a party's refusal to execute the agreement is a violation of the Act. Windward Teachers Assn., 346 NLRB 1148, 1150 (2006).

A "meeting of the minds" in contract law is based on the objective terms of the contract rather than on the parties' subjective understanding of the terms. Thus, subjective understandings (or misunderstandings) of the meaning of terms that have been agreed to are irrelevant, provided that the terms themselves are unambiguous when judged by a reasonable standard. When the terms of a contract are ambiguous, and the parties attach different meanings to the ambiguous terms, a "meeting of the minds" is not established. *Hempstead Park Nursing Home*, 341 NLRB 321, 322 (2004); see also *Windward Teachers Assn.*, 346 NLRB at 1150.

1. Schwartz' authority to speak on Respondents' behalf

Before tackling the ultimate question of whether the parties reached an agreement in their 2011 contract negotiations, it is important to first establish Schwartz' authority to speak on Respondents' behalf. On that issue, the Board has long recognized that an agent assigned to negotiate a collective-bargaining agreement is deemed to have apparent authority to bind his or her principal in the absence of clear notice to the contrary. A principal may limit its agent's authority, however, by giving clear and timely notice (i.e., notice provided before an agreement is reached) to the other parties that any tentative agreement is contingent on subsequent approval or ratification. *A.W. Farrell & Son, Inc.*, 359 NLRB No. 154, slip op. at 2 (2013); *Teamsters Local No. 771 (Ready-Mixed Concrete)*, 357 NLRB No. 173, slip op. at 4 (2011).

In this case, it is clear that Schwartz had (at a minimum) apparent authority to speak on the Association's and Respondents' behalf for the 2011 negotiations with the Union about a successor collective-bargaining agreement. Schwartz served in a similar capacity when the parties negotiated the 2006–2011 contract, and before the 2011 negotiations began, Schwartz communicated with the Union to pin down which parking garage employers did not opt out of coordinated bargaining and thus would be covered by the Association's negotiations with the

Union. Further, once negotiations began, Schwartz took the lead on responding to the Union's contract proposals, and communicating the Association's counter-proposals. Although Respondents typically sent representatives to the parties' bargaining sessions, Schwartz was always the Association's point of contact and chief spokesperson. (Findings of Fact (FOF), Sections II(A)(1), (B)(1)–(6), (8)–(9).) Given those facts, and the absence of any clear and timely notice that Schwartz' bargaining authority was limited or contingent on subsequent approval by Respondents, I find that Schwartz had the authority to bind Respondents to a new contract.

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2. Did the parties have a meeting of the minds for a 2011–2016 contract?

At the outset, the parties disagree about when (if at all) they reached an agreement, with Respondents pointing to October 14, and the Union and the Acting General Counsel pointing to October 28. I agree with Respondents that the parties reached their agreement on October 13– 14, when Coli, Jr. notified Schwartz that the Union would accept the Association's final offer. In accepting the offer, Coli, Jr. made remarks that were the email equivalent of shaking hands on the deal at the end of a face to face meeting. Specifically, Coli, Jr. stated that he believed the parties have "a Tentative Agreement that we can begin to finalize," and then thanked "everyone for their time and effort in getting to this point." Schwartz reciprocated on the Association's behalf in an email sent on October 14, stating that the Association (and Respondents) were in accord with the clarifications that Coli, Jr. raised in his October 13 email, and that the Association and Respondents were looking "forward to a ratification." See *Teamsters Local No*. 771 (Ready-Mixed Concrete), 357 NLRB No. 173, slip op. at 5 (2011) (explaining that handshakes and mutual expressions of satisfaction about the successful negotiation of a contract are "hallmark indication[s] that a binding agreement has been reached at the end of negotiations"); Windward Teachers Assn., 346 NLRB at 1150–1151 (same). Consistent with the fact that the parties reached an agreement, the Union board members of the PILMC agreed to support a campaign against a proposed new city congestion tax, and the Union also posted a Bargaining Update on its website that announced the parties had negotiated a new Master Parking Agreement. (FOF, Section II(B)(5); see also CP Br. at 33 (noting that the Union could have claimed there was a binding contract on October 14).)

Since the parties reached their agreement on October 13–14, their communications between October 14 and 28 about the contract were merely communications aimed at converting their agreement into a complete, written contract. The only information that the parties' October 13–14 agreement provided about wage scales, however, was that they should "reflect [55] cents per hour annual increases" and be "proportionate to [the] prior agreement." (FOF, Section II(B)(5).)

I find that the terms of the parties' agreement were ambiguous regarding the wage scales for employees.⁴⁰ When the Union began drafting the final version of the contract, the Union

⁴⁰ In so finding, I reject Respondents' arguments that the parties reached an enforceable agreement on October 13-14 that included Respondents' version of the wage scales, and that the written contract should be reformed to correct a scrivener's error and reflect the October 13–14 agreement. (See R. Br. at 48–66.) As I explain herein, the October 13–14 agreement included ambiguous language about the wage scales for which neither party is to blame, and thus the parties did not form a contract because they did not have a meeting of the minds on material terms of their apparent agreement.

decided that "proportionate" wage scales would have a \$2 differential between "old" employees hired before November 1, 2011, and "new" employees hired on or after November 1, 2011. The Union's interpretation was not unreasonable, but it did result in a large group of employees (those hired between November 1, 2006, and October 31, 2011) receiving an immediate raise of \$2 solely by virtue of being reclassified as "old" employees. 41 (See FOF, Section II(B)(6).) By contrast, the Association and Respondents took the view that "proportionate" scales would essentially look like a continuation of the expiring wage scales, augmented by the annual 55– cent-per-hour wage increases. Under such an approach, employees hired between November 1, 2006, and October 31, 2011, would continue to earn wages \$2 per hour behind "old" employees, and employees hired after November 1, 2011 would follow along under a similar pay scale. (See FOF, Section II(B)(8)–(9).) Given these equally plausible, but different, understandings of the ambiguous agreement to have wage scales "proportionate to the prior agreement," this is a classic case of a misunderstanding that can be traced to an ambiguity for which neither party is to blame. Under those circumstances, the result is that the parties' "seeming agreement will create no contract." Hempstead Park Nursing Home, 341 NLRB at 322–323; see also Vallero Retail Trade Bureau, 243 NLRB 762, 767 (1979) (finding that there was no contract because of an ambiguity in the parties' letter of understanding), enfd. 626 F.2d 119 (9th Cir. 1980); OCAW, Local 7–507, 212 NLRB 98, 107–108 (1974) (same, where the parties' apparent agreement included a material ambiguity about wage rates for which neither party was to blame).

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To be sure, the Union's frustration that the Association and Respondents did not raise their concerns about the wage scales until November 2 is understandable, given that the Union

The Union and the Acting General Counsel maintain that this approach was the only reasonable one because it followed the tradition (established with earlier contracts) of using the contract effective date as the cutoff date between the wage scales for new hires and existing employees. (See, e.g., GC Br. at 36; CP Br. at 7–8, 34–36 (citing *Solo Cup Co.*, Case 17–CA–22768, slip op. at 15–16 (2006).) Specifically, the Acting General Counsel and Union assert that because of the tradition regarding wage scales, Respondents should have known that the Union would include employees hired between November 1, 2006, and October 31, 2011, in the wage scale for "old" employees, and create a second wage scale for new hires occurring on or after November 1, 2011.

I find that this argument misses the mark. If Respondents indeed should have known at the time of the apparent agreement that the Union would interpret the ambiguity in the October 13–14 agreement as approving immediate \$2.55 per hour raises to all employees hired between November 1, 2006 and October 31, 2011 (as the Union's version of the wage scales would do by virtue of including those employees in the "old" employee wage scale), then Board law would supply a basis for holding Respondents to the Union's view of the agreement. See Solo Cup Co., slip op. at 15–16 (employer could be required to accept the union's understanding of the term "full pension benefits" because the employer knew of the union's understanding at the time of the agreement, and there was no evidence that the union knew that the employer interpreted the term differently). The evidentiary record, however, does not support such a finding. The parties did not discuss the wage scales in any detail before October 13–14, much less how those scales would need to be adjusted to account for the fact that the expiring 2006–2011 contract was unique insofar as new hires ended the contract term with wages that lagged \$2 per hour behind old employees (instead of catching up, as was the case with previous contracts). Because those questions were left unresolved, and the agreement to have wage scales "proportionate to the prior agreement" was left undefined. Respondents were not on notice that the Union understood those issues differently than Respondents as of October 13–14. Accordingly, I do not have a basis for requiring Respondents to abide by the Union's understanding of the ambiguous terms of the October 13–14 agreement.

sent Schwartz multiple drafts (starting on October 18) that included the same wage scales. With that being said, I emphasize that this is not a case where a party agreed to contract language and then subsequently (out of buyer's remorse) deemed that same contract language to be objectionable. Instead, this is a case in which the parties' apparent agreement itself included ambiguous language that precluded a meeting of the minds, and thus resulted in there being no contract.

The Board's decision in *Windward Teachers Association* illustrates the distinction. In that case, the employer and union attended a September 3 bargaining session at which they discussed a draft agreement that included language that clearly authorized the employer to pay bonuses without the union's approval. After reviewing the draft, the union requested certain changes, but did not comment about the language concerning bonuses. When the union's requested changes were resolved, the employer and union ended the September 3 meeting "with congratulatory handshakes and mutual statements of satisfaction about having successfully negotiated a successor collective-bargaining agreement." *Windward Teachers Assn.*, 346 NLRB at 1149. Thereafter, the employer and the union exchanged written drafts of the September 3 agreement. Although those drafts included the same language about bonuses that was presented on September 3, the union did not object to the bonus language until October 22. The Board held, however, that the union was obligated to execute a contract that included the bonus language because that language was part of the agreement that the employer and union reached on September 3. Id. at 1150–1152.

In short, the Board in *Windward Teachers Association* held the union to the agreement that it reached on September 3 (including the language about bonuses contained therein), notwithstanding the union's subsequent objections. Here, the parties reached an apparent agreement on October 13–14, but that apparent agreement is a nullity because it included ambiguous language about wage scales. Under those circumstances, Respondents' late-breaking objections permissibly served the purpose of highlighting the ambiguous language in the original, apparent agreement.

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Based on the foregoing analysis, I find that the terms of the parties' October 13–14 apparent agreement about wage scales are ambiguous because they permit two reasonable, but conflicting, interpretations. Since neither party is to blame for the ambiguity, I find that the Acting General Counsel did not meet its burden of proving that the parties had a "meeting of the minds" on the employee wage scales for the 2011–2016 collective-bargaining agreement. Consequently, Respondents did not violate Section 8(a)(5) and (1) of the Act when they refused to execute the October 28 version of the contract that the Union prepared, and I recommend that the complaint in this case be dismissed in its entirety.⁴²

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Since my ruling that the parties did not form a contract due to a lack of a meeting of the minds is dispositive, I decline to address Respondents' other arguments for why they did not violate the Act when they refused to execute the October 28 version of the contract. See R. Br. at 38, 97–117 (arguing, *inter alia*, that: Respondents were entitled to rescind any contract before the Union membership ratified it; and that LAZ Parking, ABM Parking and Imperial Parking were not bound by any agreement that Schwartz reached because Schwartz acted contrary to their interests during the draft review process).

CONCLUSIONS OF LAW

The Acting General Counsel has failed to prove by a preponderance of the evidence that Respondents violated Section 8(a)(5) and (1) of the Act by refusing, since on or about October 28, 2011, to execute a successor collective-bargaining agreement that the Union prepared and circulated for signature.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴³

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ORDER

The complaint is dismissed.

15 Dated: Washington, D.C. October 25, 2013

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Geoffrey Carter Administrative Law Judge

⁴³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.